

CIVIL COVER SHEET

19 - 671

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Carol Mulhern

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address and Telephone Number)

DEFENDANTS

Federal Retirement Thrift Investment Board, et al.

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

Vivica D. Parker, AUSA, 215-846-8443
415 Chestnut St., Suite 1250
Philadelphia, PA 19104

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- | | |
|---|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input checked="" type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF	DEF	PTF	DEF
<input type="checkbox"/> 1	<input type="checkbox"/>	<input type="checkbox"/> 1	<input type="checkbox"/>	<input type="checkbox"/> 4
<input type="checkbox"/> 2	<input type="checkbox"/>	<input type="checkbox"/> 2	<input type="checkbox"/>	<input type="checkbox"/> 5
<input type="checkbox"/> 3	<input type="checkbox"/>	<input type="checkbox"/> 3	<input type="checkbox"/>	<input type="checkbox"/> 6
Citizen or Subject of a Foreign Country				

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability		<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability			<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine			<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 345 Marine Product Liability			<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle			<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability			<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury			<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice			<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 720 Labor/Management Relations	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 751 Family and Medical Leave Act	<input type="checkbox"/> 864 SSID Title XVI	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer w/Disabilities - Employment	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 865 RSI (405(g))	
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer w/Disabilities - Other	<input type="checkbox"/> 791 Employee Retirement Income Security Act		
	<input type="checkbox"/> 448 Education			
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application	
			<input type="checkbox"/> 465 Other Immigration Actions	
V. ORIGIN (Place an "X" in One Box Only)			FEDERAL TAX SUITS	
<input type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 896 Arbitration
			<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
				<input type="checkbox"/> 950 Constitutionality of State Statutes

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)

§ 42 U.S.C. Section 1983

Brief description of cause

Removal from state court - plaintiff filed complaint in Chesa Co.

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION
UNDER RULE 23, F.R.C.P.

DEMAND \$

CHECK YES only if demanded in complaint
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

FEB 15 2019

DATE

2/15/19

SIGNATURE OF ATTORNEY OF RECORD

Vivica D. Parker

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFFP

JUDGE

MAG JUDGE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

19cv671

DESIGNATION FORM

(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 499 W. Lancaster Ave., Apt. C9 Downingtown, PA 19335Address of Defendant: 77 K Street, N.E., Ste. 1000, Washington, DC 20002Place of Accident, Incident or Transaction: Federal Retirement Thrift Investment Board

RELATED CASE, IF ANY:

Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when Yes is answered to any of the following questions.

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes No
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes No
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? Yes No
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes No

I certify that, to my knowledge, the within case is is not related to any case now pending or within one year previously terminated action in this court except as noted above.DATE 2/15/19Vivreca D. Parker/Jet
Attorney-at-Law / Pro Se PlaintiffF0401

Attorney ID # (if applicable)

CIVIL: (Place a ✓ in one category only)

A. Federal Question Cases:

- 1. Indemnity Contract, Marine Contract, and All Other Contracts
- 2. FELA
- 3. Jones Act-Personal Injury
- 4. Antitrust
- 5. Patent
- 6. Labor-Management Relations
- 7. Civil Rights
- 8. Habeas Corpus
- 9. Securities Act(s) Cases
- 10. Social Security Review Cases
- 11. All other Federal Question Cases
(Please specify) § U.S.C. Section 8472

B. Diversity Jurisdiction Cases:

- 1. Insurance Contract and Other Contracts
- 2. Airplane Personal Injury
- 3. Assault, Defamation
- 4. Marine Personal Injury
- 5. Motor Vehicle Personal Injury
- 6. Other Personal Injury (Please specify) _____
- 7. Products Liability
- 8. Products Liability - Asbestos
- 9. All other Diversity Cases
(Please specify) _____

I, Vivreca D. Parker, counsel of record or pro se plaintiff, do hereby certify Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs. Relief other than monetary damages is sought.FEB 15 2019DATE 2/15/19Vivreca D. Parker/Jet
Attorney-at-Law / Pro Se PlaintiffF0401

Attorney ID # (if applicable)

NOTE A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38

R/K

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

CAROL MULHERN,)
499 W. Lancaster Ave. Apt. C-9)
Downington, PA 19335)
Plaintiff *pro se*,)
v.)
FEDERAL RETIREMENT THRIFT)
INVESTMENT BOARD)
77 K Street, N.E.)
Suite 1000)
Washington, D.C. 20002)
Michael Kennedy, Managing Director)
Dana K. Bilyeu, Executive Director)
Ron McCray, Investor and Corp. Director)
David A. Jones, LLC Independent Consult. Firm.)
William Jasien, CEO and Managing Director)
Rivindra Deo, Exe. Director)
Defendants.)

Case No.

19cv671

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. Section 1442(a)(1), the United States of America, on behalf of defendants, the Federal Retirement Thrift Investment Board, Michael Kennedy, Managing Director, Dana K. Bilyeu, Executive Director, Ron McCray, Investor and Corporate Director, David A. Jones, LLC, William Jasien, CEO and Managing Director, and Rivindra Deo, Executive Director, removes this action to the United States District Court for the Eastern District of Pennsylvania. In support, the United States avers as follows:

1. On or about January 18, 2019, plaintiff Carol Mulhern filed a complaint in the Court of Common Pleas for Chester County, Pennsylvania. A true and correct copy of the Complaint is attached hereto as Exhibit "A."

2. The Federal Retirement Thrift Investment Board (“FRTIB”) is an agency in the executive branch of the United States with the sole responsibility of administering the Thrift Savings Plan (“TSP”). 5 U.S.C. § 8472. The FRTIB consists of five Presidentially-appointed board members who elect an Executive Director, and set the policies for the administration of the TSP. The TSP is one part of the retirement system created for federal employees by the Federal Employees’ Retirement System Act of 1986. The TSP is a defined contribution retirement savings plan that is similar to private sector 401(k) plans. Plaintiff Mulhern is a former federal employee who maintained a TSP account with the FRTIB.

3. On October 3, 2018, Mulhern requested a withdrawal of all funds in her TSP account. In the complaint, Mulhern alleges that the FRTIB improperly deducted taxes from the amount Mulhern withdrew. Mulhern claims she is entitled to have the full amount that was in her account paid to her without any amount deducted for taxes.

4. The individual defendants are the board members and Executive Director of the FRTIB, and are employees of the United States who were acting within the scope of their employment at all times relevant to Mulhern’s allegations. *See Declaration of William M. McSwain, United States Attorney, attached hereto as Exhibit “B.”* As such, the United States is substituted as a matter of law pursuant to 28 U.S.C. § 2679(d)(1), which provides the following:

Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a United States district court shall be deemed an action against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant.

5. The United States district courts have exclusive jurisdiction over proper and timely claims for recovery of internal revenue tax alleged to have been erroneously or illegally assessed or collected (28 U.S.C. § 1346(a)), and claims arising under the Constitution, acts of Congress, and agency and executive department regulations. 28 U.S.C. § 1346(b).

6. Accordingly, this is a suit against the United States, and removal of this action is proper pursuant to 28 U.S.C. § 1442(a)(1).

7. Under 28 U.S.C. § 1442(a)(1), any civil action commenced in State court against an agency of the United States may be removed to the United States District Court for the district in which the action is pending. This action is removable to this Court pursuant to 28 U.S.C. § 2679(d)(2), which provides in pertinent part that:

Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place in which the action or proceeding is pending

8. In accordance with 28 U.S.C. § 1446(d), a true and correct certified copy of this Notice of Removal is being: (a) filed in the Chester County Court of Common Pleas; and (b) sent to *pro se* plaintiff.

9. No bond is required to accompany this Notice because it is being filed on behalf of the United States.

10. In accordance with 28 U.S.C. § 1446(a), this Notice of Removal is signed under Rule 11 of the Federal Rules of Civil Procedure.

11. Removal by the United States is timely pursuant to the 30-day deadline set forth in 28 U.S.C. § 1446(b).

WHEREFORE, the United States of America, on behalf of the Federal Retirement Thrift Investment Board, Michael Kennedy, Managing Director, Dana K. Bilyeu, Executive Director, Ron McCray, Investor and Corporate Director, David A. Jones, LLC, William Jasien, CEO and Managing Director, and Rivindra Deo, Executive Director, gives notice that the State court action, Mulhern v. Federal Retirement Thrift Investment Board, Michael Kennedy, Managing Director, Dana K. Bilyeu, Executive Director, Ron McCray, Investor and Corporate Director, David A. Jones, LLC, William Jasien, CEO and Managing Director, and Rivindra Deo, Executive Director, Case No. 2019-00878-MJ, is removed to the United States District Court for the Eastern District of Pennsylvania.

Respectfully submitted,

WILLIAM M. McSWAIN
United States Attorney

Susan R Becker for GBD
GREGORY B. DAVID
Assistant United States Attorney
Chief, Civil Division

Dated: February 15, 2019

Susan R Becker for VDP
VIVECA D. PARKER
Assistant United States Attorney
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106-4476
Phone: (215) 861-8443

CERTIFICATE OF SERVICE

I hereby certify that on this __ day of February, 2019, I served a true and correct copy of the foregoing Notice of Removal, with exhibits, by First Class U.S. Mail on the following persons addressed as follows:

Carol Mulhern
499 W. Lancaster Ave. apt. C-9
Downington, PA 19335
Pro se plaintiff

Susan R Becker for v DP
VIVECA D. PARKER
Assistant United States Attorney

CERTIFICATION OF SCOPE OF EMPLOYMENT

I, William M. McSwain, the undersigned United States Attorney, pursuant to the provisions of 28 U.S.C. Section 2679(d) and by virtue of the authority vested in me by the Attorney General of the United States under 28 C.F.R. Section 15.3(a), hereby certify that to the best of my knowledge, information, and belief, based upon information supplied to me in my official capacity, defendants Michael Kennedy, Managing Director, Dana K. Bilyeu, Executive Director, Ron McCray, Investor and Corporate Director, David A. Jones, LLC, William Jasien, CEO and Managing Director, and Rivindra Deo, Executive Director, were acting within the scope of their employment by the United States Federal Retirement Thrift Investment Board when the underlying events occurred. In reaching this determination, I have considered (1) the Complaint; and (2) the representation of counsel for the United States Federal Retirement Thrift Investment Board that the individual defendants were acting within the scope of their employment by the United States Federal Retirement Thrift Investment Board at the time of the events and occurrences in question.

Therefore, I have been authorized in my official capacity by the United States Department of Justice to so certify and move to substitute the United States of America pursuant to 28 U.S.C. §2679 as to any and all claims raised against them in this action.

Lusan R Deo for WMM
WILLIAM M. MCSWAIN
UNITED STATES ATTORNEY

DATED: February 15, 2019

EXHIBIT A

CHESTER COUNTY COURT OF COMMON PLEAS

Carol Mulhem
499 W. Lancaster Ave. Apt. C-9
Downington, PA. 19335
Phone# 484-787-1879

Plaintiff, Pro Se

Federal Retirement Thrift Investment Board
77 K Street, N.E.
Suite 1000
Washington, D.C. 20002
Phone# 202-942-1600

Michael Kennedy, Managing Director
Dana K. Bilyeu, Executive Director
Ron McCray, Investor and Corp. Director
David A. Jones, LLC Independent Consult. Firm.
William Jasien, CEO and Managing Director
Rivindra Deo, Exe. Director

Defendants

CIVIL COMPLAINT FOR FIDUCIARY BREACH OF DUTY

Plaintiff, Carol Mulhem (hereinafter "Plaintiff" or "Mulhem") files this Civil Action Complaint and Demand for a jury trial against Defendant, Federal Retirement Thrift Investment Board. This action for declaratory, injunctive, monetary and other appropriate relief is brought by the Plaintiff, to redress Fiduciary breach of duty, 29 USC 1106 (b), and acts of withholding retirement saving funds. As described in Title 18, chapter 3901 "Deprive". In support thereof avers the following:

FACTUAL AVERMENTS

Plaintiff's retirement account# 19011982137945 has a savings for \$152,540.40. Plaintiff completed the TSP-75 Form to withdrawal/transfer retirement funds to another retirement account at the Citadel Federal Credit Union, then faxed and mailed the documents to the Thrift Savings Plan (TSP) representatives approximately, Oct. 3, 2018. In turn, the Thrift Savings Plan representatives sent the Plaintiff an incorrect amount of funds taxed by check for \$127,381.55 instead of the entire amount of \$152,540.40 tax deferred, as a retirement plan roll over.

2019 JAN 18 AM 11:49
OFFICE OF THE
FIDUCIARY
COURT
CITADEL
CREDIT UNION
PA

FILED

TSP treated the withdrawal of funds as a regular withdrawal instead of a roll over to another retirement account, thereby subjecting Plaintiff's TSP retirement funds to a 20% tax.

TSP acknowledged by phone they only received the partial fax of Plaintiff's TSP-75 withdrawal/transfer form, but failed to correct what TSP perceived as a regular withdrawal. In turn, Plaintiff sent numerous letters to TSP dated Oct. 22, Nov. 5 and Dec. 7, of 2018 requesting the error of processing Plaintiff's retirement funds as a regular withdrawal corrected as a withdrawal/transfer to retirement account tax deferred.

On December 29, 2018, Plaintiff sent Defendants another TSP-75 form requesting the full amount of her TSP retirement funds as tax deferred, along with the Citadel Federal Credit Union retirement account information. In turn, Defendants failed to correct Plaintiff's retirement fund withdrawal/transfer request of a tax-deferred payment for her savings \$152,540.40.

In total, Plaintiff sent Defendants letters requesting the full amount of TSP savings as tax deferred dated; Oct. 3, Oct. 22, Nov. 5, Dec. 7, and Dec. 29 of 2018 without resolution. Plaintiff has also been waiting for a VA pension from the Office of Personnel Management, (OPM) and is with little funds to pay living expenses. TSP is causing a financial hardship since Plaintiff is looking to purchase a home and has retired effective 11/1/2018.

Pursuant to 5 CFR 1600.31 (1) Plaintiff request all savings to be rolled over onto Citadel Federal Credit Union Retirement Account as taxed deferred. Defendants breached Fiduciary Duty, 29 USC 1106 (b) Transactions between Plan and Fiduciary (2) in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants.

Failure to correct Thrift Savings as a tax deferred payment.

JURISDICTION AND VENUE

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1335, all of which provide for original jurisdiction of Plaintiffs' claims arising under the laws of the United States and over actions to recover damages and to secure and other relief under the appropriate governing statutes.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

Enter a declaratory judgment that the actions of Defendant violated the rights of Plaintiff as secured to her by PA State statutes;

Award Plaintiff her entire invested retirement savings in its entirety the amount of \$152,540.40.

Award Plaintiff damages in compensation for her emotional distress and loss financial living expenses.

Award Plaintiff damages, for punitive actions by the Defendant where she was improperly denied her lawful entire entitlement savings invested for approximately 28 years.

Award Plaintiff court filing fees.

Sincerely,

Carol Mulhern
PRO SE Plaintiff, Carol Mulhern

Date: 1/18/2019

CERTIFICATE OF SERVICE

You have been sued in court. If you wish to defend against the claims set forth in the above pages, you must take action within 20 days after this complaint and notice received. Failure to respond to this civil action may lead to a judgement against you.

I, Carol Mulhem, Plaintiff certify, I have sent Federal Retirement Thrift Investment Board this notice of a civil action against them by mail to defend in the West Chester Court House, West Chester Pennsylvania 19380.

U.S. Mail

Federal Retirement Thrift Investment Board
77 K Street, N.E.
Suite 1000
Washington, D.C. 20002

2019 JAN 18 AM 11:49
OFFICE OF THE
PRESIDENTARY
WEST CO PA

FILED

Attn: Michael Kennedy, Managing Director
Dana K. Bilyeu, Executive Director
Ron McCray, Investor and Corp. Director
David A. Jones, LLC Independent Consult. Firm.
William Jasien, CEO and Managing Director
Rivindra Deo, Exe. Director

Date January 19, 2019

Plaintiff, Carol Mulhem Carol Mulhem

C. M. Culver
494 W. Lancaster Ave.
Holt # 9



CERTIFIED MAIL



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U.S. POSTAGE PAID
FROM FORTINDALE, PA.
AMOUNT

Federal Retirement Thrift Investment Board
77 L. Street, N.E.
Suite 1000
Washington, D.C. 20002

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